

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NUVASIVE, INC.)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cv-10800
)	
TIMOTHY DAY)	
)	
Defendant.)	
)	

NUVASIVE, INC.’S PROPOSED ADVERSE INFERENCE

Pursuant to the Report and Recommendation on Plaintiff’s Renewed Motions for Sanctions for Spoliation of Evidence (D.E. 217) and the Order of the Court Adopting the Report and Recommendations (D.E. 226), NuVasive, Inc. hereby requests that the Court enter the following adverse inference in this matter:

The spoliated communications are deemed to be unfavorable to the Defendant and conclusive on the following issues:

1. The Defendant’s breach of the non-competition and non-solicitation restrictions contained in the NuVasive PIIA with respect to solicitation of NuVasive’s customers (as defined by the PIIA), employees, agent, and representatives prior to and after May 29, 2019;
2. The Defendant’s breach of the non-solicitation restrictions set forth in the Court’s May 29, 2019, preliminary injunction (ECF 31) in violation thereof; and
3. The Defendant’s breach of the non-competition and non-solicitation restrictions contained in the NuVasive PIIA, in violation of the May 29, 2019, preliminary injunction, caused damages to the Plaintiff in the form of lost profits on sales to its customers, including, without

limitation, lost profits on sales of spinal hardware, biologics, and disposables to Dr. Paul Glazer, Dr. Brian Kwon, and Dr. John Shin.

Respectfully submitted,
NUVASIVE, INC.
By its attorneys,

/s/ Holly M. Polglase

Holly M. Polglase (BBO #553271)

hpoglase@hermesnetburn.com

Michael S. Batson (BBO #648151)

mbatson@hermesnetburn.com

HERMES, NETBURN, O'CONNOR &
SPEARING, P.C.

265 Franklin Street, Seventh Floor

Boston, MA 02110-3113

Tel: (617) 728-0050

Fax: (617) 728-0052

Christopher W. Cardwell, Esq. (*pro hac vice*)

Mary Taylor Gallagher (*pro hac vice*)

M. Thomas McFarland, Esq. (*pro hac vice*)

GULLETT, SANFORD, ROBINSON &
MARTIN, PLLC

150 Third Avenue South, Suite 1700

Nashville, TN 37201

(615) 244-4994 (Telephone)

(615) 256-6339 (Facsimile)

ccardwell@gsrm.com

mtgallagher@gsrm.com

tmcfarland@gsrm.com